Filed 2/7/03 In re Jesus E. CA4/1

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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re JESUS E., JR., a Person Coming Under the Juvenile Court Law.	
SAN DIEGO COUNTY HEALTH AND HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. VICTORIA E., et al., Defendants and Appellants.	D040789 (Super. Ct. No. J514062)

APPEALS from judgment of the Superior Court of San Diego County, Susan D. Huguenor, Judge. Affirmed.

Victoria E. (the mother) and Jesus E. (the father) appeal the judgment terminating their parental rights to their son, Jesus E., Jr. The mother contends the judgment is void for lack of jurisdiction because there was not proper service or appearance by the parties

and she was denied due process because the court terminated parental rights on the basis of a failure to comply with court ordered services when, in fact, the court ordered no services. The father also claims the court erred in proceeding without giving proper notice and in ordering no reunification services without proof of a diligent search to locate the parents. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Jesus, Jr., was born in August 2001 suffering from exposure to opiates. He was given methadone for his withdrawal symptoms. The mother admitted using heroin four times a day during her pregnancy. The father also admitted heroin use. The mother's two older daughters live with their maternal grandmother (the grandmother).

On August 16, 2001, the San Diego County Health and Human Services Agency (the Agency) petitioned on Jesus, Jr.'s, behalf under Welfare and Institutions Code section 300, subdivision (b),[1] alleging he was at risk because of his exposure to drugs and the parents' drug use. The parents did not attend the detention hearing, and Jesus, Jr., was placed in foster care. The court clerk mailed copies of the petition to the parents at the address they had given to the social worker.

The parents did not appear at the jurisdictional/dispositional hearing on September 10, 2001, and the court found there had been reasonable search efforts to locate and notify them of the proceedings. The social worker reported that initially the parents telephoned her and left voice mail messages, but there had been no contact since August

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1 All statutory references are to the Welfare and Institutions Code.

17. She stated she had tried to reestablish communication, mailing them several letters, leaving business cards at the address they had given, and contacting the grandmother. She also stated the services available to the parents had been explained to them and they had been directed to contact the Substance Abuse Recovery Management System (SARMS), but they had not maintained contact. At the hearing, the court declared Jesus, Jr., a dependent child, removed custody from the parents and placed him in foster care. The minute order indicates the court ordered the parents to comply with their case plan. The transcript of the hearing, however, shows the court denied services under section 361.5, subdivision (b)(1).[2]

The parents were not present at the six-month review hearing on March 11, 2002. The social worker reported she had made several telephone calls to the grandmother, who stated her only contact with the mother was in November 2001, when the mother called and said she wanted to see her daughters. They planned to meet, but the mother did not show up. The social worker also met with a maternal aunt. She left her telephone number with the grandmother and the aunt and asked them to have the mother call if they had any contact with her. The social worker's report indicates she was under the impression reunification services had been ordered. Apparently, the court also understood that services had been ordered because it then found reasonable reunification

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2 Section 361.5, subdivision (b)(1) provides that reunification services need not be provided when the court finds by clear and convincing evidence that the whereabouts of the parent is unknown.

services had been offered or provided and terminated services. The court found proper notice had been given and set a section 366.26 hearing.

On May 22, 2002, the mother called the social worker from prison. She requested legal representation and said had not come forward earlier because she there was a warrant for her arrest and she did not want to get "busted." She indicated she was then incarcerated and expected to be released in January 2003. She gave the social worker a telephone number for the father. He said he also wanted legal counsel. At a special hearing, counsel was appointed for each parent.

For the section 366.26 hearing, the social worker opined Jesus, Jr., is highly adoptable because of his young age and good health and development. A maternal relative and the foster mother are interested in adopting him and, in addition, 45 families were identified as waiting to adopt a child with Jesus, Jr.'s, characteristics. At the section 366.26 hearing on August 15, 2002, the social worker was made available for cross examination, but no party asked any questions of her. The parties stipulated that if the mother were to testify, she would state she objects to termination of her parental rights and that she spent time with Jesus, Jr., in the hospital after his birth. The court terminated parental rights, finding Jesus, Jr., is highly adoptable and none of the exceptions to adoption of section 366.26, subdivision (c)(1) were present.

DISCUSSION

I. Notice

The mother and the father contend the court acted without jurisdiction because they did not receive proper notice of the proceedings and the evidence does not support a finding the Agency conducted reasonable search efforts for them.

The parents waived this issue because neither of them raised the issue of a lack of notice of the earlier hearings after they received notice of the section 366.26 hearing. In *In re Meranda P.* (1999) 56 Cal.App.4th 1143, the appellate court determined if a parent has been afforded due process, the child's and the state's interests in finality and expediting the proceedings require that earlier final orders may not be challenged on an appeal from a later appealable order. (*Id.* at pp. 1151-1160.) "[T]he waiver rule will be enforced unless due process forbids it." (*In re Janee J.* (1999) 74 Cal.App.4th 198, 208.)

The record here shows the parents were not deprived of due process. There were diligent attempts to notify them of the petition and the hearings. The social worker explained in her report that in the first days after Jesus, Jr., was born she was in contact with the parents and they telephoned her and left voice messages. Soon afterward, however, the communication stopped. The clerk of the court sent copies of the petition to the address the parents had given, the social worker drove to the residence, where she left her business card, and she also left messages with maternal relatives, but the parents did not contact her. Importantly, they had actual knowledge of the proceedings. They spoke with the social worker on August 15, 2001, but did not appear at the detention hearing the next day. When the mother contacted the social worker from prison in May 2002, she

explained she had not come forward earlier because she knew there was a warrant for her arrest and she did not want to get "busted." There is no showing the parents were deprived of due process. At the section 366.26 hearing neither parent objected to the court's prior findings and orders. They have waived the issue.

Moreover, the parents have not shown that the court's findings they were afforded sufficient notice were not supported by substantial evidence. We disagree with the mother's argument that this court must conduct a de novo review of the juvenile court's findings. The standard of review is whether the findings are supported by substantial evidence. A reviewing court must uphold a juvenile court's findings and orders if they are supported by substantial evidence. (*In re Amos L.* (1981) 124 Cal.App.3d 1031, 1036-1037.) "[W]e must indulge in all reasonable inferences to support the findings of the juvenile court [citation], and we must also '. . . view the record in the light most favorable to the orders of the juvenile court.'" (*In re Luwanna S.* (1973) 31 Cal.App.3d 112, 114, quoting *In re Biggs* (1971) 17 Cal.App.3d 337, 340.) The appellant bears the burden to show the evidence is insufficient to support the court's findings. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

The parents have not made the requisite showing. Substantial evidence supports a finding of reasonable search efforts.[3] The social worker spoke with the parents at the

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3 The Agency argues the father is merely an alleged father and so has no right to reunification services and no standing to challenge denial of services. It concedes, however, that he does have standing to argue the sufficiency of the evidence to find there were reasonable search efforts.

hospital in the morning on August 15, 2001, and they were scheduled to meet that afternoon. When they did not appear at the detention hearing the next day, the court ordered them to be served with copies of the petition. For the jurisdictional/dispositional report, the social worker stated:

> "After an initial flurry of phone calls (2) and voice mails (4) from the parent(s), contact ceased and has not been resumed between the undersigned social worker and the parents since 8/17/01. They have not been located, even though many attempts to reestablish communication have been employed. The undersigned social worker has mailed several letters, driven by their alleged address and left business cards, and made contact with an extended family member, all to no avail."

In March 2002, the social worker reported the parents' whereabouts were unknown. She had continued to try to locate them through the maternal grandmother and maternal aunt and had left her name and telephone number with these relatives. Then, in May, the mother called the social worker and said she had not contacted her earlier because she knew there was a warrant for her arrest. She provided a telephone number for the father and the social worker then requested a special hearing to provide counsel for each parent. This record indicates the parents had actual knowledge of the proceedings, but chose not to come forward. They have not shown the evidence was insufficient to support the court's findings there were reasonable efforts to locate them.

II. The Court's Finding of Reasonable Services

The mother asserts the court violated her right to due process by finding at the six-month hearing that the parents did not comply with court-ordered services when, in fact, no services were ever ordered. The transcript of the disposition hearing shows the

court denied services at that hearing. Thus, there was no reason for it to find at the six-month hearing that reasonable services had been provided. The finding, however, caused no prejudice to the mother. We reject her argument that it constitutes a structural error. Section 361.5, subdivision (b) provides reunification services need not be provided if the court finds the whereabouts of the parents are unknown. Here, the Agency undertook reasonable, diligent search efforts, but was unable to locate the parents. The mother has not shown the court erred in denying services at the disposition hearing. Her whereabouts were unknown at the time of both the dispositional and six-month hearings. She has not shown prejudice from the court's misstatement in finding reasonable services had been provided or offered.

DISPOSITION

The judgment is affirmed.

NARES, J.

WE CONCUR:

KREMER, P. J.

HUFFMAN, J.